

CHANGES TO QUEENSLAND WORKERS COMPENSATION LAWS

On Friday 18th October, late in the evening, the Queensland Government ushered through amendments to the Queensland Worker Compensation Act and Regulation 2003, which will have a substantial impact on both worker and employers. The aim of the changes (according to the Queensland Government) was to control rising workers compensation premiums. On first glance at the changes it appears that these changes will reduce some both statutory (worker compensation and lump sum payments) and common law (litigation) claims, which will ultimately lead to reduced premiums. This paper will primarily outline what the changes mean for employers, but will cover the potential impacts to workers making a claim. The key changes to the legislation are summarised below.

1. Employers now have the right to request information about a workers' WorkCover history:

Up until this point it was against the law for an employer to request or gain access to a workers' WorkCover history. The reason for this was to reduce the likelihood of an employer unfairly discriminating against that worker based on this information. The counter argument to this is of course that employers have duties toward the workers safety, and liability in case of injury; therefore to ensure this they should have knowledge about the workers injury history. This would of course enable the employer to place the worker in a place and ensure duties that do not cause further injury.

There are good arguments for both sides, but the fact remains that employers may now request this information – in writing. Further, if the information is requested, and a worker does not declare, then the worker may be denied compensation.



2. No common law claims for injuries with less than 5% permanent impairment:

Common law is the legal system used when a worker sues their employer (through WorkCover) for negligence, with the aim of accessing compensation for damages (i.e. the injury). It operates when a worker has a stabilised injury and they are left with a permanent impairment from that injury. Once the injury has stabilised the worker's impairment is assessed and expressed as a percentage of a maximum. The system up until now allowed workers with any permanent impairment (PI) access to common law, however if they were assessed as less than 20% PI they had to forgo any lump sum payments that were offered as part of their claim.



Under the new laws workers with an assessed PI of less than 5% will not have access to these common law claims. Above 5% PI will remain unchanged. This will effectively mean that more 50% of workers (i.e. those assessed at less than 5% PI) who would previously have access to common law will not now be able to do so. Again there are good arguments for both sides of this change. The process of common law claims is lengthy and onerous for the employer, WorkCover and the worker. During the process there is less incentive for the workers to

return to work, and they may be left psychologically affected by the process. On the other hand the worker may now be denied access to fair (and often much larger) compensation that takes into account future losses though due to an injury that was in no way their fault.

3. Changes to the meaning of Psychological and Psychiatric Injury:

Psychological and psychiatric injuries (PPI's) occurred when a worker is able to prove that they have developed an injury of this type and the workplace was a *significant contributing factor*. Injuries may include such things as a post-traumatic stress disorder (PTSD), anxiety disorder and adjustment disorder, and can be caused or linked to things like occupational violence, armed hold-ups but also bullying and harassment by management (reasonable management action is explicitly excluded). The meaning of a PPI has now been changed such that the workplace now must be the *major contributing factor* – a subtle change from significant to major but one that will essentially make it slightly harder to have a claim accepted where there are multiple factors involved, of which the workplace is only one. The end result to this is that I believe we will see less PPI claims being accepted by WorkCover.



All of these changes will have the effect of reducing the entitlements in some areas of workers in our scheme, and at the same time reduce the premiums that are being paid by employers. This will in turn make it more attractive for business to operate in Queensland, which has a benefit for all. All workers compensation schemes must strike a balance between fairness for workers and business, and it is all little too early for me to form an opinion on the fairness of these changes. Changes they are though, and as businesses, bosses and Rehabilitation Coordinators and Providers we must at least understand them.

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